

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PATRICK PATT,)
)
Plaintiff,)
)
v.) No. 06 C 5199
)
CALLAN ASSOCIATES, INC.,)
)
Defendant.)

**DEFENDANT'S MOTION TO DISMISS COMPLAINT
PURSUANT TO FED.R.CIV.P. 12(b)(6)**

Pursuant to Fed. R. Civ. P. 12(b)(6), Callan Associates, Inc. ("Callan") respectfully moves to dismiss the class action complaint filed by Patrick Patt ("Patt"). In support of its motion, Callan submits its Memorandum of Law (filed contemporaneously herewith), and states as follows:

1. Callan was retained by the Teachers' Retirement System of the State of Illinois ("TRS") as an investment consultant, pursuant to a written agreement. Among other things, Callan's duties included the making of recommendations to TRS concerning which investment managers TRS might retain. Mr. Patt, who alleges that he is a participant in TRS, filed a class action lawsuit claiming that Callan breached its fiduciary duty to TRS by purportedly failing to disclose that it had a "conflict of interest" by virtue of the fact that it also performs services for and receives fees from investment managers.

2. As demonstrated in Callan's supporting Memorandum, the complaint must be dismissed for the following four independent reasons: (i) the consulting agreement out of which Mr. Patt's claim purportedly arises, on its face, makes the disclosure that Mr. Patt alleges Callan failed to make; (ii) Mr. Patt does not allege that Callan had an actual conflict of interest or that

any mechanism existed whereby Callan could profit at the expense of TRS; (iii) Mr. Patt has not alleged that Callan ever made a recommendation to TRS that was in Callan's interest but was contrary to the best interests of TRS; and (iv) Mr. Patt has failed to allege that any purported breach of fiduciary duty has caused any loss or injury to TRS or its participants.

3. Moreover, because the contract between Callan and TRS (which Mr. Patt did not attach to the complaint but which is an exhibit to Callan's Memorandum) specifically discloses the supposed conflict and destroys any possible claim, the complaint must be dismissed with prejudice.

WHEREFORE, for the foregoing reasons, defendant, Callan Associates, Inc., respectfully requests that this Court enter an order: granting its motion; dismissing Mr. Patt's complaint with prejudice; and awarding Callan such other and further relief as the Court deems just and proper.

Respectfully submitted,

CALLAN ASSOCIATES, INC.

By: _____ /s/ Robert D. Cheifetz
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